

Chapter 16a

Commitment and Treatment of Persons with a Mental Illness

Part 1

Plea and Verdict of Guilty with a Mental Illness

77-16a-101 Definitions.

As used in this chapter:

- (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.
- (2) "Department" means the Department of Human Services.
- (3) "Executive director" means the executive director of the Department of Human Services.
- (4) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, or organization that contracts with a local mental health authority.
- (5) "Mental illness" is as defined in Section 76-2-305.
- (6) "Offender with a mental illness" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability.
- (7) "UDC" means the Department of Corrections.

Amended by Chapter 366, 2011 General Session

77-16a-102 Jury instructions.

- (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall instruct the jury that it may find the defendant:
 - (a) guilty;
 - (b) guilty with a mental illness at the time of the offense;
 - (c) guilty of a lesser offense;
 - (d) guilty of a lesser offense with a mental illness at the time of the offense;
 - (e) not guilty by reason of insanity; or
 - (f) not guilty.
- (2)
 - (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or asserts special mitigation reducing the level of an offense pursuant to Subsection 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it finds that the defendant had a mental illness at the time of the offense.
 - (b) If the jury finds the defendant guilty of the charged offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty with a mental illness at the time of the offense."
 - (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense with a mental illness at the time of the offense."
 - (d) If the jury finds the defendant guilty of the charged offense or a lesser included offense and does not find that the defendant had a mental illness at the time of the offense, the jury shall

return a verdict of "guilty" of that offense, along with the special verdict form indicating that the jury did not find that the defendant had a mental illness at the time of the offense.

- (e) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.
- (3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed that the standard of preponderance of the evidence does not apply to the elements establishing a defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any offense must be proven beyond a reasonable doubt.
- (4)
 - (a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return a special verdict.
 - (b) The special verdict shall be returned by the jury at the same time as the general verdict, to indicate the basis for its general verdict.

Amended by Chapter 366, 2011 General Session

77-16a-103 Plea of guilty with a mental illness at the time of the offense.

- (1) Upon a plea of guilty with a mental illness at the time of the offense being tendered by a defendant to any charge, the court shall hold a hearing within a reasonable time to determine whether the defendant currently has a mental illness.
- (2) The court may order the department to examine the defendant, and may receive the testimony of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval by the executive director.
- (3)
 - (a) A defendant who tenders a plea of guilty with a mental illness at the time of the offense shall be examined first by the trial judge, in compliance with the standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty with a mental illness at the time of the offense is a plea of guilty and not a contingent plea.
 - (b) If the defendant is later found not to have a current mental illness, that plea remains a valid plea of guilty with a mental illness at the time of the offense, and the defendant shall be sentenced as any other offender.
- (4) If the court concludes that the defendant currently has a mental illness, the defendant's plea shall be accepted and the defendant shall be sentenced in accordance with Section 77-16a-104.
- (5)
 - (a) When the offense is a state offense, expenses of examination, observation, and treatment for the defendant shall be paid by the department.
 - (b) Travel expenses shall be paid by the county where prosecution is commenced.
 - (c) Expenses of examination for defendants charged with violation of a municipal or county ordinance shall be paid by the municipality or county that commenced the prosecution.

Amended by Chapter 366, 2011 General Session

77-16a-104 Verdict of guilty with a mental illness -- Hearing to determine present mental state.

- (1) Upon a verdict of guilty with a mental illness for the offense charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's present mental state.
- (2) The court may order the department to examine the defendant to determine the defendant's mental condition, and may receive the evidence of any public or private expert witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah State Hospital for that examination only upon approval of the executive director.
- (3) If the court finds by clear and convincing evidence that the defendant currently has a mental illness, the court shall impose any sentence that could be imposed under law upon a defendant who does not have a mental illness and who is convicted of the same offense, and:
 - (a) commit the defendant to the department, in accordance with the provisions of Section 77-16a-202, if:
 - (i) the court gives the department the opportunity to provide an evaluation and recommendation under Subsection (4); and
 - (ii) the court finds by clear and convincing evidence that:
 - (A) because of the defendant's mental illness the defendant poses an immediate physical danger to self or others, including jeopardizing the defendant's own or others' safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation; and
 - (B) the department is able to provide the defendant with treatment, care, custody, and security that is adequate and appropriate to the defendant's conditions and needs;
 - (b) order probation in accordance with Section 77-16a-201; or
 - (c) if the court determines that commitment to the department under Subsection (3)(a) or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in the custody of UDC or a county jail as allowed by law.
- (4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall, before making a determination, notify the executive director of the proposed placement and provide the department with an opportunity to evaluate the defendant and make a recommendation to the court regarding placement prior to commitment.
- (5) If the court finds that the defendant does not currently have a mental illness, the court shall sentence the defendant as it would any other defendant.
- (6) Expenses for examinations ordered under this section shall be paid in accordance with Subsection 77-16a-103(5).

Amended by Chapter 366, 2011 General Session

Part 2
Disposition of Defendants Found Guilty with a Mental Illness

77-16a-201 Probation.

- (1)
 - (a) In felony cases, when the court proposes to place on probation a defendant who has pled or is found guilty with a mental illness at the time of the offense, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for

that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

- (b) The court may not place an offender who has been convicted of the felony offenses listed in Section 76-3-406 on probation, regardless of whether the offender has, or had, a mental illness.
- (2) The period of probation for a felony offense committed by a person who has been found guilty with a mental illness at the time of the offense may be for no less than five years. Probation for those offenders may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.
- (3)
 - (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.
 - (b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.
 - (c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.
- (4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.
- (5) The court may not release an offender with a mental illness into the community, as a part of probation, if it finds by clear and convincing evidence that the offender:
 - (a) poses an immediate physical danger to self or others, including jeopardizing the offender's own or others' safety, health, or welfare if released into the community; or
 - (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.
- (6) An offender with a mental illness who is not eligible for release into the community under the provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Amended by Chapter 366, 2011 General Session

77-16a-202 Person found guilty with a mental illness -- Commitment to department -- Admission to Utah State Hospital.

- (1) In sentencing and committing an offender with a mental illness to the department under Subsection 77-16a-104(3)(a), the court shall:
 - (a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or
 - (b) sentence the offender to a term of imprisonment and order that the offender be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the

sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

- (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of an offender with a mental illness who has been convicted of a capital felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.
- (3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.
- (4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

**77-16a-203 Review of offenders with a mental illness committed to department --
Recommendations for transfer to Department of Corrections.**

- (1)
 - (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each offender with a mental illness committed to it in accordance with Section 77-16a-202, at least once every six months.
 - (b) If the offender has an intellectual disability, the review team shall include at least one individual who is a designated intellectual disability professional, as defined in Section 62A-5-101.
- (2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:
 - (a) regarding the offender's:
 - (i) current mental condition;
 - (ii) progress since commitment; and
 - (iii) prognosis; and
 - (b) that includes a recommendation regarding whether the offender with a mental illness should be:
 - (i) transferred to UDC; or
 - (ii) remain in the custody of the department.
- (3)
 - (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that an offender with a mental illness is eligible for transfer to UDC if the review team finds that the offender:
 - (i) no longer has a mental illness; or

- (ii) has a mental illness and may continue to be a danger to self or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and
 - (iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.
- (b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:
- (i) all available clinical facts;
 - (ii) the diagnosis;
 - (iii) the course of treatment received at the mental health facility;
 - (iv) the prognosis for remission of symptoms;
 - (v) the potential for recidivism;
 - (vi) an estimation of the offender's dangerousness, either to self or others; and
 - (vii) recommendations for future treatment.

Amended by Chapter 366, 2011 General Session

**77-16a-204 UDC acceptance of transfer of persons found guilty with a mental illness --
Retransfer from UDC to department for admission to the Utah State Hospital.**

- (1) The UDC medical administrator shall designate a transfer team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the recommendation made by the department's review team pursuant to Section 77-16a-203. If the offender has an intellectual disability, the transfer team shall include at least one person who has expertise in testing and diagnosis of people with intellectual disabilities.
- (2) The transfer team shall concur in the recommendation if the transfer team determines that UDC can provide the offender with a mental illness with adequate mental health treatment.
- (3) The UDC transfer team and medical administrator shall recommend the facility in which the offender should be placed and the treatment to be provided in order for the offender's mental condition to remain stabilized to the director of the Division of Institutional Operations, within the Department of Corrections.
- (4) In the event that the department and UDC do not agree on the transfer of an offender with a mental illness, the administrator of the mental health facility where the offender is located shall notify the mental health adviser for the board, in writing, of the dispute. The mental health adviser shall be provided with copies of all reports and recommendations. The board's mental health adviser shall make a recommendation to the board on the transfer and the board shall issue its decision within 30 days.
- (5) UDC shall notify the board whenever an offender with a mental illness is transferred from the department to UDC.
- (6) When an offender with a mental illness sentenced under Section 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is evaluated and it is determined that the offender's mental condition has deteriorated or that the offender has become mentally unstable, the offender may be readmitted to the Utah State Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.
- (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.
- (8) An offender with a mental illness who has been readmitted to the Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance with the provisions of Section 77-16a-203.

Amended by Chapter 366, 2011 General Session

77-16a-205 Parole.

- (1) When an offender with a mental illness who has been committed to the department becomes eligible to be considered for parole, the board shall request a recommendation from the executive director and from UDC before placing the offender on parole.
- (2) Before setting a parole date, the board shall request that its mental health adviser prepare a report regarding the offender with a mental illness, including:
 - (a) all available clinical facts;
 - (b) the diagnosis;
 - (c) the course of treatment received at the mental health facility;
 - (d) the prognosis for remission of symptoms;
 - (e) potential for recidivism;
 - (f) an estimation of the dangerousness of the offender with a mental illness either to self or others; and
 - (g) recommendations for future treatment.
- (3) Based on the report described in Subsection (2), the board may place the offender with a mental illness on parole. The board may require mental health treatment as a condition of parole. If treatment is ordered, failure to continue treatment, except by agreement with the treatment provider, and the board, is a basis for initiation of parole violation hearings by the board.
- (4) UDC, through Adult Probation and Parole, shall monitor the status of an offender with a mental illness who has been placed on parole. UDC may provide treatment by contracting with the department, a local mental health authority, any other public or private provider, or in-house staff.
- (5) The period of parole may be no less than five years, or until expiration of the defendant's sentence, whichever occurs first. The board may not subsequently reduce the period of parole without considering an updated report on the offender's current mental condition.

Amended by Chapter 366, 2011 General Session

Part 3
Defendants Pleading Not Guilty by Reason of Insanity

77-16a-301 Mental examination of defendant

- (1)
 - (a) When the court receives notice that a defendant intends to claim that the defendant is not guilty by reason of insanity or that the defendant had diminished mental capacity, or that the defendant intends to assert special mitigation under Subsection 76-5-205.5(1)(a), the court shall order the Department of Human Services to examine the defendant and investigate the defendant's mental condition.
 - (b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in any proceeding in which the testimony is otherwise admissible.

- (c) Pending trial, unless the court or the executive director directs otherwise, the defendant shall be retained in the same custody or status the defendant was in at the time the examination was ordered.
- (2)
 - (a) The defendant shall be available and shall fully cooperate in the examination by the department and any other independent examiners for the defense and the prosecuting attorney.
 - (b) If the defendant fails to be available and to fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to the defendant's defense of mental illness at the trial of the case.
 - (c) The department shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.
- (3) Within 10 days after receipt of the report from the department, but not later than five days before the trial of the case, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental illness, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.
- (4) The reports of any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.
- (5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).
- (6) This section does not require the admission of evidence not otherwise admissible.
- (7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

Amended by Chapter 206, 2009 General Session

77-16a-302 Persons found not guilty by reason of insanity -- Disposition.

- (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing within 10 days to determine whether the defendant currently has a mental illness. The defense counsel and prosecutors may request further evaluations and present testimony from those examiners.
- (2) After the hearing and upon consideration of the record, the court shall order the defendant committed to the department if it finds by clear and convincing evidence that:
 - (a) the defendant has a mental illness; and
 - (b) because of that mental illness the defendant presents a substantial danger to self or others.
- (3) The period of commitment described in Subsection (2) may not exceed the period for which the defendant could be incarcerated had the defendant been convicted and received the maximum sentence for the crime of which the defendant was accused. At the time that period expires, involuntary civil commitment proceedings may be instituted in accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 366, 2011 General Session

77-16a-303 Court determinations.

After entry of judgment of not guilty by reason of insanity, the court shall:

- (1) determine on the record the offense of which the person otherwise would have been convicted and the maximum sentence he could have received; and
- (2) make specific findings regarding whether there is a victim of the crime for which the defendant has been found not guilty by reason of insanity and, if so, whether the victim wishes to be notified of any conditional release, discharge, or escape of the defendant.

Enacted by Chapter 171, 1992 General Session

77-16a-304 Review after commitment.

- (1)
 - (a) The executive director, or the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months.
 - (b) The team described in Subsection (1)(a) shall include:
 - (i) at least one psychiatrist; and
 - (ii) if the defendant has an intellectual disability, at least one staff member who is a designated intellectual disability professional.
- (2) If the review team described in Subsection (1) finds that the defendant has recovered from the defendant's mental illness, or, that the defendant still has a mental illness but does not present a substantial danger to self or others, the executive director, or the executive director's designee, shall:
 - (a) notify the court that committed the defendant that the defendant is a candidate for discharge; and
 - (b) provide the court with a report stating the facts that form the basis for the recommendation.
- (3)
 - (a) The court shall conduct a hearing within 10 business days after receipt of the executive director's, or the executive director's designee's, notification.
 - (b) The court clerk shall provide notice of the date and time of the hearing to:
 - (i) the prosecuting attorney;
 - (ii) the defendant's attorney; and
 - (iii) any victim of the crime for which the defendant was found not guilty by reason of insanity.
- (4)
 - (a) The court shall order that the defendant be discharged from commitment if the court finds that the defendant:
 - (i) no longer has a mental illness; or
 - (ii) has a mental illness, but no longer presents a substantial danger to self or others.
 - (b) The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the defendant:
 - (i) has a mental illness;
 - (ii) is a substantial danger to self or others; and
 - (iii) can be controlled adequately if conditionally released with treatment as a condition of release.
 - (c) The court shall order that the commitment be continued if the court finds that the defendant:
 - (i) has not recovered from the defendant's mental illness;
 - (ii) is a substantial danger to self or others; and
 - (iii) cannot adequately be controlled if conditionally released on supervision.
 - (d)

- (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.
- (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Amended by Chapter 366, 2011 General Session

77-16a-305 Conditional release.

- (1) If the review team finds that a defendant is not eligible for discharge, in accordance with Section 77-16a-304, but that his mental illness and dangerousness can be controlled with proper care, medication, supervision, and treatment if he is conditionally released, the review team shall prepare a report and notify the executive director, or his designee, that the defendant is a candidate for conditional release.
- (2) The executive director, or his designee, shall prepare a conditional release plan, listing the type of care and treatment that the individual needs and recommending a treatment provider.
- (3) The executive director, or his designee, shall provide the court, the defendant's attorney, and the prosecuting attorney with a copy of the report issued by the review team under Subsection (1), and the conditional release plan. The court shall conduct a hearing on the issue of conditional release within 30 days after receipt of those documents.
- (4) The court may order that a defendant be conditionally released if it finds that, even though the defendant presents a substantial danger to himself or others, he can be adequately controlled with supervision and treatment that is available and provided for in the conditional release plan.
- (5) The department may provide treatment or contract with a local mental health authority or other public or private provider to provide treatment for a defendant who is conditionally released under this section.

Amended by Chapter 285, 1993 General Session

77-16a-306 Continuing review -- Discharge.

- (1) Each entity that provides treatment for a defendant committed to the department as not guilty by reason of insanity under this part shall review the status of each defendant at least once every six months. If the treatment provider finds that a defendant has recovered from the defendant's mental illness, or, if the defendant has a mental illness, no longer presents a substantial danger to self or others, it shall notify the executive director of its findings.
- (2) Upon receipt of notification under Subsection (1), the executive director shall designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If that review team concurs with the treatment provider's assessment, the executive director shall notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a candidate for discharge. The court shall conduct a hearing, in accordance with Section 77-16a-302, within 10 business days after receipt of that notice.
- (3) The court may not discharge an individual whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making the defendant a substantial danger to self or others.

Amended by Chapter 366, 2011 General Session